

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
BENJAMIN FONKEM,)	
Plaintiff,)	
)	
v.)	
)	Civil Action No. 04-10754-EFH
DEAN O'MALLEY AND)	
TIMOTHY AHERN, in their)	
individual capacities,)	
Defendants.)	
_____)	

JOINT STIPULATION OF FACTS, STATEMENT OF ISSUES TO BE TRIED
AND NAMES OF WITNESSES

I. STIPULATION OF FACTS

1. Defendants Dean O'Malley and Timothy Ahern were at all times alleged in the complaint Massachusetts State Police officers.
2. Defendants O'Malley and Ahern were acting under color of state law at all times alleged in the complaint.
3. Defendants O'Malley and Ahern were acting within the scope of their employment at all times alleged in the complaint.
4. On April 19, 2001, at approximately 10:15 a.m., Benjamin Fonkem was driving on Columbia Road in Dorchester.
5. Defendant O'Malley stopped Mr. Fonkem's car and ordered Mr. Fonkem to step out of the car.
6. Defendant O'Malley conducted a pat-down frisk of Mr. Fonkem.
7. The pat frisk did not reveal any weapons or contraband.

8. Defendant O'Malley handcuffed Mr. Fonkem's hands behind the back.
9. Defendant O'Malley placed Mr. Fonkem in the rear seat of the police car.
10. Defendant O'Malley took Mr. Fonkem's driver's license and called for backup. Defendant Ahern arrived on the scene shortly thereafter.
11. Defendants O'Malley and Ahern searched Mr. Fonkem's car including the glove compartment, fuse compartment and trunk.
12. Defendant O'Malley radioed police dispatch to check the status of Mr. Fonkem's driver's license and for a warrants check. Dispatch replied that Mr. Fonkem's driver's license was valid and that there were no warrants in his name.
13. Defendant O'Malley lifted Mr. Fonkem's waistband and looked inside his pants.
14. Defendant O'Malley conducted the search of Mr. Fonkem's pants in the backseat of the police cruiser on Buttonwood Street while defendant Ahern stood nearby.
15. Defendants O'Malley and Ahern did not find any contraband during the search.
16. Defendants O'Malley and Ahern released Mr. Fonkem after the search.
17. Defendants O'Malley and Ahern did not arrest Mr. Fonkem, charge him with a crime, a motor vehicle violation or any other violation of law.

II. STATEMENT OF ISSUES TO BE TRIED

1. Did Defendant O'Malley stop Mr. Fonkem and detain him without cause?
2. Did Defendants O'Malley and Ahern search Mr. Fonkem without cause?
3. Did Defendant O'Malley search Mr. Fonkem in an unreasonable manner or place?
4. Did Defendant Ahern stay by and watch as Defendant O'Malley conducted the search of Mr. Fonkem?
5. Did Defendants O'Malley and Ahern violate Mr. Fonkem's rights under the MCRA?

6. Did Defendants O'Malley and Ahern unreasonably, substantially, or seriously interfere with Mr. Fonkem's right of privacy?
7. What injuries did Mr. Fonkem suffer as a result of this incident?
8. What amount of damages are necessary to compensate Mr. Fonkem for any injuries suffered by him?

III. NAMES OF WITNESSES

For convenience, the witnesses are listed by the party who is expected to call the witness. The parties reserve the right to call any listed witness.

A. Plaintiff's Witnesses

1. Plaintiff Benjamin Fonkem
2. Emmanuella Valsimond
3. Victor Fonkem
4. Helen Fonkem
5. Edith Yesufu
6. Linda Chikezie

B. Defendant's Witnesses

7. Defendant Dean O'Malley, Massachusetts State Police
8. Defendant Timothy Ahern, Massachusetts State Police
9. Lt. Al Zani, Massachusetts State Police

Plaintiff will oppose the defendants calling Lt. Al Zani as a witness in this case on grounds that the defendants failed to identify him as a potential witness and he has no relevant information about the case.

RESPECTFULLY SUBMITTED,
For the plaintiff:

/s/ Myong J. Joun

Howard Friedman
BBO# 180080
Myong J. Joun
BBO# 645099
Law Offices of Howard Friedman, P.C.
90 Canal Street, 5th Floor
Boston, MA 02114-2022
(617) 742-4100

For defendant Timothy Ahearn:

/s/ Thomas P. Campbell, III

Leonard H. Kesten
BBO# 542042
Thomas P. Campbell, III
BBO# 564124
Brody, Hardoon, Perkins & Kesten
One Exeter Plaza
Boston, MA 02116
(617) 880-7100

For defendant Dean O'Malley:

/s/ Joseph G. Donnellan

Joseph G. Donnellan

BBO# 558060

Law Offices of Timothy M. Burke

160 Gould Street, Suite 111

Needham, MA 02494

(781) 455-0707